

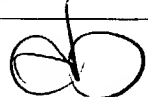


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,730	01/22/2001	Claudio L.K. Lins	6289	1305
22922	7590	03/16/2004	EXAMINER	
REINHART BOERNER VAN DEUREN S.C. ATTN: LINDA GABRIEL, DOCKET COORDINATOR 1000 NORTH WATER STREET SUITE 2100 MILWAUKEE, WI 53202			CHORBAJI, MONZER R	
			ART UNIT	PAPER NUMBER
			1744	
DATE MAILED: 03/16/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/766,730	Applicant(s) LINS, CLAUDIO L.K.	
	Examiner MONZER R CHORBAJI	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/05/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).
3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
4. Claims 1-2 and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5-6 of U.S. P.N. 5,167,950. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:
 - Regarding claim 1 of application number 09/766,730, claims 1 and 6 of U.S.P.N. 5,167,950 disclose such concepts.
 - Regarding claim 2 of application number 09/766,730, claim 1 of U.S.P.N. 5,167,950 discloses such concept.
 - Regarding claim 5 of application number 09/766,730, claim 6 of U.S.P.N. 5,167,950 discloses such concept.

5. Claims 3-4 and 6-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5-6 of Lins (U.S.P.N. 5,167,950) in view of Schroeder et al (U.S.P.N.5, 591,395).

Regarding claims 7-8 of application number 09/766,730 claims 1 and 6 of U.S.P.N. 5,167,950 disclose such concepts.

With respect to claims 3-4, 6, and 10-12, the ('950) reference fails to disclose the use of a conductivity control component and the use of triethylene glycol. However with regard to claim 10, the ('950) reference teaches the concept of using ethanol in claim 1. The ('395) reference teaches the use of a conductivity control component (example 1), which inherently includes essential oils and the use of triethylene glycol (example 2), which would inherently has a viscosity. Thus, it would have been obvious to one having ordinary skill in the art to modify the composition of the ('950) reference to include triethylene glycol since such compounds readily generate particles which form an aerosol suspension in the air (Schroeder et al, col.1, lines 62-64).

With respect to claim 9, the ('950) reference teaches the concepts of using a glycol component and an alcohol component in claims 1 and 5-6, but fails to teach the concept of using a conductivity control component. However, the ('395) reference teaches the use of a conductivity control component (example 2). Thus, it would have been obvious to one having ordinary skill in the art to modify the composition of the ('950) reference to include a conductivity control component in various proportions since it can have an adverse effect on the air sanitizing effect of the active ingredient (Schroeder et al, col.2, lines 19-23).

6. Claims 13-17 and 22-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5-6 of Lins (U.S.P.N. 5,167,950) in view of Schroeder et al (U.S.P.N. 5,591,395) and further in view of Fox et al (U.S.P.N. 4,482,357).

With respect to claims 13 and 22, the ('950) reference teaches the concepts of using a glycol component and ethanol in claims 1 and 5-6, but fails to disclose the use of a conductivity control component and the use of an electrostatic dispensing apparatus. Schroeder et al teaches the use of a conductivity control component (example 1) such that determining the proper concentration of a fragrance is a subjective matter depending on how strong or weak the smell of the disinfectant should. However, Schroeder et al fails to teach the use of an electrostatic dispensing apparatus. Fox et al teaches the use of an electrostatic dispensing apparatus (figure 1, an aerosol spray device). Thus, it would have been obvious to one having ordinary skill in the art to modify the system of the ('950) reference to include an electrostatic dispensing apparatus in order to provide spray droplets with a greater collision rate with the allergen particles for denaturing or deactivating airborne allergens (Fox et al, col.1, lines 46-51).

With respect to claims 14-17 and 23-24, Schroeder et al teaches the following: 3-log reduction in airborne microbial levels (col.1, lines 3-8), glycol component is present at solute concentrations (example 2), the composition delivered at a certain rate (the apparatus of Schroeder et al inherently delivers the composition at a certain rate such that a specific delivery rate is a matter of experimentation), a fragrance component that

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inherently has a certain viscosity range (example 1), and the use of triethylene glycol (example 2).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox et al (U.S.P.N. 6,482,357) in view of Peltier (U.S.P.N. 5,196,171).

With respect to claim 18, Fox et al teaches a method of electrostatically charging (col.6, lines 32-35) a glycol composition (col.3, line 20) with an apparatus having a voltage source (figure 1 and col.7, lines 63-65) such that the apparatus delivers the composition at a rate sufficient to effect a 3-log reduction in airborne microbial levels (col.1, lines 54-58), but fails to teach the use of an electrode. Peltier teaches the use of an electrode (abstract, lines 1-8). Thus, it would have been obvious to one having ordinary skill in the art to modify the method of Fox et al to include an electrode in order to

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control the rate of vapor generation by the adjusting the output of the voltage (Peltier, col.2, lines 15-18 and lines 33-35).

With respect to claim 19, Fox et al teaches the use of propylene glycol (col.3, line 20).

10. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox et al (U.S.P.N. 6,482,357) in view of Peltier (U.S.P.N. 5,196,171) and further in view of Schroeder et al (U.S.P.N. 5,591,395).

With respect to claims 20-21, both Fox et al and Peltier fail to teach the use of triethylene glycol and a conductivity control component. However, Schroeder et al teaches the use of triethylene glycol (col.1, line 67) and a conductivity control component (example 1). Thus, it would have been obvious to one having ordinary skill in the art to modify the method of Fox et al to include a conductivity control component in various proportions since it can have an adverse effect on the air sanitizing effect of the active ingredient (Schroeder et al, col.2, lines 19-23).

Conclusion


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 8:30-5:00.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Monzer R. Chorbaji
Patent Examiner
AU 1744
03/05/2004


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